

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED: NOVEMBER 26, 2008

WATERS INDUSTRIES, INC., an Illinois
corporation,

Plaintiff,

v.

NOVELTY, INC., an Indiana corporation,

Defendants.

) Civil Action No. 08CV6809
) JUDGE ANDERSEN
) The Honorable MAGISTRATE JUDGE DENLOW
)
) Magistrate Judge TC
)
) **COMPLAINT**
)
) **JURY TRIAL DEMANDED**
)

Plaintiff, Waters Industries, Inc. ("Waters Industries") complains against Defendant, Novelty, Inc. as follows:

THE PARTIES

1. Waters Industries is a corporation incorporated under the laws of the State of Illinois with its principal place of business at 213 West Main Street, West Dundee, Illinois. Waters Industries' wholly owned Panther Vision division designs and sells a variety of hands free LED task lighting products for consumers and businesses, including lighted caps having at least one pair of spaced LEDs built into the brim.

2. Upon information and belief, Novelty, Inc. is a corporation incorporated under the laws of the State of Indiana with its principal place of business at 351 W. Muskegon Drive, Greenfield, IN 46140. Upon information and belief, Novelty, Inc., by itself, and through one or more entities owned, controlled or otherwise affiliated with Novelty, Inc., conducts business in Illinois and in this District including, without limitation, by distributing and selling a variety of novelty products to consumers and retail businesses, including LED caps that compete directly with the LED caps of Waters Industries' Panther Vision division.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

4. Venue lies in this District pursuant to 28 U.S.C. §§1391(b), 1391(c) and 1400(b) because Novelty, Inc. is subject to personal jurisdiction in this District, has regularly conducted business in this District and/or has committed acts of infringement in this District.

FIRST CAUSE OF ACTION – INFRINGEMENT OF ‘786 PATENT

5. On December 9, 2003, U.S. Patent No. 6,659,618 (“the ‘618 patent”) entitled, “HEADWEAR HAVING A BRIM WITH ILLUMINATION DEVICE” was duly and legally issued to Michael Waters on an application filed on November 4, 2002 and claiming priority to a related application filed on November 7, 2001. Waters Industries currently owns all right, title and interest in and to the ‘618 patent. A copy of the ‘618 patent is appended as Exhibit A.

6. Novelty, Inc., by itself, and through its subsidiaries, affiliates, and agents, including but not limited to affiliated entities Novelty Wholesale, Inc., Novelty Transportation Inc. and/or Novelty Liquidators, has been, and is, infringing the ‘618 patent by making, using, offering to sell, selling and/or importing devices incorporating the inventions patented in the ‘618 patent within the United States and within this District; and by contributing to the infringement by others and by inducing others to infringe the ‘618 patent. Novelty, Inc.’s infringing products include lighted LED baseball type caps, representative examples of which are shown in the attached Exhibit B. Unless enjoined by the Court, Novelty, Inc. will continue to infringe, contribute to the infringement of and/or induce the infringement of the ‘618 patent.

7. Novelty, Inc.’s direct infringement of the ‘618 patent, and/or its inducement of or contribution to the infringement of others, has injured Waters Industries, and Waters Industries is

entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. §284.

8. Waters Industries has given Novelty, Inc. written notice of the '618 patent, but Novelty, Inc. has continued its infringement notwithstanding its actual knowledge of the patent. Novelty, Inc.'s infringement of the '618 patent has been willful and deliberate, and will continue to injure Waters Industries unless the Court enters an injunction prohibiting further infringement of the '618 patent.

PRAYER FOR RELIEF

WHEREFORE, Waters Industries prays for:

1. Judgment that the '618 patent is valid, enforceable, and infringed by the Novelty, Inc.;
2. Judgment that Novelty, Inc.'s acts of patent infringement are willful;
3. A preliminary and permanent injunction enjoining Novelty, Inc., its officers, agents, servants, employees, subsidiaries and affiliated companies, and those persons acting in active concert or participation therewith, from engaging in the aforesaid unlawful acts of patent infringement;
4. An award of damages arising out of Novelty, Inc.'s acts of patent infringement, together with pre-judgment and post-judgment interest;
5. Judgment that the damages so adjudged be trebled in accordance with 35 U.S.C. §284;
6. An award of Waters Industries' attorneys fees, costs and expenses incurred in this action in accordance with 35 U.S.C. §285; and
7. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Waters Industries demands trial by jury of all issues triable of right by a jury.

Respectfully submitted,

Date: November 26, 2008

s/ Timothy P. Maloney

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